



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

November 13, 2002

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14, and 16,
Transmittal No. 226, WC Docket No. 02-317**

Dear Ms. Dortch:

Please accept the attached late filing in the above-captioned proceeding. ALTS attempted to file this filing via the Electronic Comment Filing System; however, there were technical problems with the system and it would not accept electronic filings. Unfortunately, at that time it was past the deadline for paper filing, thus ALTS is filing this Opposition one day late and requests it be treated as if it was timely filed.

Sincerely,

Teresa K. Gaugler

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02-317



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**Re: Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14, and 16,
Transmittal No. 226, WC Docket No. 02-317**

Dear Ms. Dortch:

Attached is the Association for Local Telecommunications Services' ("ALTS")
Opposition to the Direct Case of Verizon Telephone Companies for filing in the above-
captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Verizon Telephone Companies) WC Docket No. 02-317
Tariff FCC Nos. 1, 11, 14, and 16,)
Transmittal No. 226)

OPPOSITION TO DIRECT CASE

The Association for Local Telecommunications Services (“ALTS”) hereby files its Opposition to the Direct Case of Verizon Telephone Companies (“Verizon”), submitted in the above-referenced proceeding in response to the Commission’s Order,¹ regarding the suspension of Verizon’s proposed tariff amendments in Transmittal No. 226.²

In the Designation Order, the Commission established areas for investigation and requested that Verizon provide certain specific data related to those issues, as well as provide justification why its current tariff language and its price cap rates do not adequately protect from or compensate for the business **risk** of customer nonpayment. Verizon repeatedly points out that bankruptcies have occurred and that its uncollectibles have increased during the past few years; however, those facts alone do not warrant such a drastic change in its deposit policy. Most importantly, Verizon has not shown that the rise in its uncollectibles is a systematic long-term problem rather than due to natural fluctuations in the market or that its current tariff language and price cap rates are inadequate to protect from or compensate for any future **risk** of

¹ *Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14, and 16, Transmittal No. 226, Order, WC Docket No. 02-317, DA 02-2522 (rel. Oct. 7, 2002) (“Designation Order”).*

uncollectibles. ALTS opposes Verizon's tariff revisions and urges the Commission not to grant Verizon the opportunity to further drive competitive carriers from the market or to treat those carriers in an anticompetitive manner.

Verizon currently may require a security deposit from customers with no established credit or with a proven history of late payments.' Under its new tariff provisions, Verizon proposes additionally to require a security deposit or advance payments from a customer if (1) that customer has fallen in arrears in its account balance in any two months out of any consecutive 12-month period; (2) the customer owes \$250,000 or more that is 30 days or more overdue; (3) the customer or its parent informs Verizon or publicly states that it is unable to pay its debts as such debts become due; (4) the customer or its parent has commenced voluntary or involuntary receivership or bankruptcy; (5) the customer's or its parent's senior debt securities are below investment grade as defined by the Securities and Exchange Commission; or (6) the customer's or its parent's senior debt securities are rated the lowest investment grade rating category by a nationally recognized statistical rating organization and are put on review by the rating organization for a possible downgrade.'

While Verizon's newly proposed triggers may appear objective, they are nonetheless unnecessarily overbroad and likely to sweep in all competitive carriers, including many that are not at risk of nonpayment. Verizon asserts that the first two triggering criteria are clarifications

(Continued from previous page)

² On August 22, 2002, the Commission suspended Verizon's proposed tariff revisions for a five (5) month investigation period. *Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14, and 16, Transmittal No. 226*, Order, DA 02-2055, rel. Aug. 22, 2002 ("Verizon Suspension Order").

³ Verizon Telephone Companies, Tariff FCC No. 1, Section 2.4.1(A).

⁴ Verizon Telephone Companies, Tariff FCC No. 1, Transmittal No. 226, 1st Revised Page 2-26.

of its previous policy requiring deposits from customers with poor payment history;' however, either trigger could lead *to* deposits being required of many carriers that have not shown any significant pattern of nonpayment. The first trigger includes no minimum threshold amount, and the second trigger sets a very low threshold amount (\$250,000) and a very short time period (30 days overdue), thus using these criteria, Verizon could potentially require a large deposit from a carrier that had only a minimal amount in arrears. In either case, the customer may not necessarily have demonstrated such poor payment history to warrant the imposition of a large security deposit or advanced payment requirement,

Verizon should also not be permitted to use its monopoly power in the local telecom market to extract concessions in the bankruptcy arena. Even Verizon has conceded that bankruptcy courts currently recognize the role of ILECs and take that into account in structuring assurances of payment by the bankrupt carrier.' The bankruptcy courts have the authority and responsibility to provide "adequate protection" to creditors and must do so considering all circumstances. Verizon should not be permitted to override the bankruptcy court through its tariff provisions. Moreover, neither the fifth nor the sixth triggering criterion provides an adequate basis for Verizon to require further assurance of payment. Many competitive carriers have experienced a downgrade in their investment grade rating, based on a variety of factors, some of which may be wholly unrelated to their ability to pay their creditors. Thus, Verizon should not be permitted to use these triggers alone to require additional security deposits or advanced payment

⁵ Verizon Direct Case at **A-2**

⁶ Petition for Emergency Declaratory and *Other* Relief, WC Docket No. 02-202, (filed July 24, 2002) at 7.

Verizon repeatedly makes the outrageous statement that it “does not have incentives to request security deposits or advance payments unless it believes that they are absolutely necessary to protect against the **risk** of customer bad debt”⁷ merely because it must pay interest on those deposits and must make manual calculations for advance payment “at considerable cost and burden to Verizon.”⁸ Considering the costs Verizon has expended in pursuing this proceeding and many other proceedings where it has attempted to undermine the competitive goals of the Telecom Act to maintain its monopoly, one can hardly believe that paying interest or requiring its employees to manually compute advance payment amounts would provide any incentive to deter Verizon from imposing burdensome requirements on its most threatening local competitors. After all, the millions of dollars Verizon has already paid for violations of the Telecom Act and similar state requirements have yet to deter Verizon from continuing to engage in anticompetitive activities.

Furthermore, Verizon’s refusal to apply these same requirements to its end-user customers is patently discriminatory and further highlights Verizon’s desire to target its competitors for this unfair treatment. Based on Verizon’s data, end user customers continue to account for 70% of Verizon’s total uncollectible amounts.⁹ Thus, for Verizon to conclude that “end user tariffs do not warrant the same measures for ensuring adequate assurance of payment” as it proposes to impose on carrier customers is ludicrous since 70% of its total uncollectibles (or \$91 million of its total \$130 million uncollectibles in 2001) is still at risk of nonpayment.

⁷ Verizon Direct Case at **A-29**.

⁸ *Id.*

⁹ Verizon indicates that carrier customers account for only 30% of its total uncollectibles. Verizon Direct Case at 14.

Verizon has not adequately explained why it feels compelled to impose such stringent requirements to protect itself from nonpayment risk for a mere \$39 million, while continuing to absorb the business risk of nonpayment for the remaining \$91 million (based on 2001 figures). However, ALTS believes Verizon's reason for these disparate policies is quite evident – its true goal here is to undermine the market-opening provisions of the Telecom Act in order to maintain its monopoly position in the market. By utilizing overbroad and ambiguous factors to supposedly determine a carrier customers' creditworthiness, Verizon would be allowed to squeeze those competitors that most threaten its current market power. Under the guise of gaining protection against financial loss, Verizon (along with BellSouth and SBC that have filed similar revised tariff provisions) instead seeks Commission support to drive the remaining CLECs into further financial distress.

Many competitive carriers have raised concerns that they would likely be swept into Verizon's dragnet and subjected to burdensome deposit requirements when in fact their companies are not at risk of default. As ALTS and others have highlighted in related proceedings, subjecting these carriers to further deposits when they are already financially stretched would have severe negative effects on local competition. This fact clearly provides ample incentive for Verizon to impose burdensome security deposit and advance payment requirements on carriers when such measures are not necessary to protect Verizon from the risk of nonpayment from those carriers. ALTS strongly agrees with the Commission that "an approach that has the fewest adverse effects on the competitive market while protecting Verizon's interests would be preferred." "In fact, ALTS believes such a result is **required**– the

¹⁰ Designation Order ¶ 16

Commission should not subjugate the needs of competitors to those of the dominant provider

Verizon is already adequately protected from nonpayment risk by security deposit provisions currently in its tariff as well as through its price cap rates. Verizon makes general statements about the financial stress and upheaval of the telecom industry, but such generalities do not support its request for additional protections against potential financial fallout from virtually every carrier in the industry. The current market volatility, by itself, does not warrant imposing such burdensome requirements on virtually all carrier customers under its tariff. Moreover, imposing such requirements will merely further increase financial uncertainty for many competitive carriers. Most competitive carriers are already financially stretched and are judiciously spending their working capital. To now require them to tie up more of that working capital in the hands of their biggest competitors is to doom competition and possibly lead to the demise of many of those carriers. Compelling them to pay additional funds to each of the ILECs to insulate the ILECs from potential financial risk only adds to the current financial uncertainty because competitive carriers would not have access to that working capital to run their businesses and generate revenues in order to timely pay the ILECs for services they purchase.

As the Commission suggested, its ratemaking policies for price cap carriers provide a mechanism to adequately compensate Verizon for the risk of uncollectibles. Verizon failed to provide any evidence that the variation in its uncollectibles for 2000 and 2001 is a long-term trend rather than a normal fluctuation accounted for by the business risks included in its price cap rates. It states that “the adjustment set in price cap rates assumes that ILECs will be facing the same ‘business risks’ as the rest of the general economy” and asserts that the “trend [in the

telecom industry] is extraordinary” thus its risk is presumably higher than the rest of the economy as a whole.” While it is true that the telecom industry has suffered a downturn in recent years, it is also true that the economy as a whole has suffered a simultaneous downturn. There is no justification for Verizon’s claim that it has experienced or will experience a greater financial **risk** than other industries or the economy as a whole.

Furthermore, Verizon has not demonstrated that it is fully utilizing the means currently available under its tariff to impose security deposits on customers with poor payment history. Verizon provides virtually no details regarding the past payment history of access customers that defaulted and admits it “does not account for its uncollectibles by type of service.”” Verizon has “calculated that roughly 90% of interstate *revenues* are attributable to access services” and then somehow deduced that the “vast majority of interstate revenues *und uncollectibles* are related to access services.”” However, Verizon provides no data to support its conjecture, thus there is no evidence that Verizon has experienced a significant increase in uncollectibles specifically related to interstate access services such that changes in the deposit provisions of its interstate access tariff are warranted. Moreover, Verizon stated that it “is not aware of any ‘typical’ pattern for customers prior to the time an account is ninety days or more overdue,”” thus it has no basis for concluding that utilizing its newly proposed triggering criteria would result in a lower risk of uncollectibles. Rather, it is reasonable to assume that Verizon could (and should) have reevaluated some nonpaying carriers’ creditworthiness under

¹¹ Verizon Direct Case at A-10

¹² *Id.* at A-11

¹³ *Id.*

its current tariff provisions and imposed additional deposit requirements based on their poor payment history. In this way, Verizon could have ameliorated its loss due to bad debt. Instead, Verizon has now chosen to employ a vague and overbroad process which could easily be arbitrarily and anticompetitively applied and which very likely would have adverse effects on the competitive telecom industry as a whole, rather than specifically on those carriers with a track record of poor payment.

Once Verizon appropriately makes a request for further assurance of payment, sufficient notice must be provided to allow carrier customers time to review Verizon's request, resolve any related billing disputes, and make arrangements for a deposit, letter of credit, or advanced payment. Seven days is simply not a reasonable amount of time for this to occur, and it is unfair for Verizon to be allowed to unilaterally impose burdensome requirements on its competitors' resources. Verizon acknowledges that it can take up to ten days after the billing date for a paper bill to be issued to a customer.¹⁵ If Verizon cannot even conduct its day-to-day billing processes to submit bills within seven days, how can it expect its carrier customers to respond to an out-of-the-ordinary disconnection notice in such a short period of time? Moreover, allowing Verizon to refuse service on such short notice would result in end-user customers losing their service within the same short notice period

Verizon proposes to refund a customer's security deposit only if (1) the customer's account balance has been paid in full; (2) the customer no longer satisfies any of the six criteria for requiring a security deposit; and (3) the customer has not met the six criteria for a period of

(Continued from previous page) —————

¹⁴ *Id.* at A-30.

¹⁵ *Id.* at A-17.

at least one year.¹⁶ Because Verizon has the initial burden to show that a deposit is required under its credit analysis, the onus should likewise be on Verizon to re-assess each customer at least annually *and* on request by a customer to determine if a deposit requirement is still necessary, according to its analysis. Additionally, Verizon should be required to refund a customer's security deposit once the customer has established credit or has promptly paid its bills for a one-year period. Furthermore, if Verizon denies a refund to a customer, that customer should have the right to contest that decision through a dispute resolution process. Verizon's proposed tariff language does not currently include provisions for a dispute resolution process for the imposition of security deposits or advanced payments or for the refusal of a refund; however, the Commission should require Verizon to include such a process to ensure that Verizon is not the arbiter of its own decisions. Carriers should not be required to undertake lengthy regulatory or litigation processes to obtain relief.

¹⁶ Verizon Tariff FCC No. 1, Transmittal No. 226, Original Page 2-26.3

CONCLUSION

ALTS urges the Commission not to allow Verizon the opportunity to unilaterally drive more competitive carriers out of the market with its unreasonable and anticompetitive demands.

The Commission should reject Verizon's tariff revisions because they are overly broad and unreasonable.

Respectfully Submitted,

**Association for Local
Telecommunications Services**

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November 12, 2002